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No. 80-1313

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

JULIA McCAIN LAMPKIN-ASAM,
PhD, Appellant,

v.

FTP-NEA (FLORIDA TEACHING
PROFESSION-NATIONAL EDUCATION
ASSOCIATION), Appellee

ON APPEAL FROM THE SUPREME
COURT OF FLORIDA

MOTION TO DISMISS APPEAL OR, IN THE ALTERNATIVE TO AFFIRM DECISION BELOW

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The Appellee, FTP-NEA (Florida Teaching Profession-National Education Association), hereinafter referred to as "FTP-NEA", respectfully submits that the appeal filed herein should be dismissed for want of a substantial federal question and for the lack of jurisdiction of this Court or, in the alternative, the decision of the Supreme Court of Florida should be affirmed.

STATEMENT OF THE CASE

The action subtending the instant appeal arose when the Appellant was not reappointed to her teaching position as an annual contract teacher in the Lee County, Florida public school system. The FTP-NEA's local affiliate, the Teachers Association of Lee County (An autonomous employee organization which was not made a party to these proceedings in the courts below) was at all times relevant hereto, the certified collective bargaining representative for a unit of employees in which the Appellant was employed. The local affiliate of the FTP-NEA had negotiated a collective bargaining agreement which, inter alia, provides a grievance and arbitration mechanism which can be used for resolution of employment related disputes.

The FTP-NEA maintains a policy, adopted by its Board of Directors, providing for legal

assistance to be accorded to members and its local affiliates in certain matters relating to the employment relationship between teachers and their employing school districts. Pursuant to such policy, legal representation was accorded to the Appellant by the FTP-NEA in the conduct of several grievance proceedings which she had initiated with her employer.

The Appellant sought further legal assistance from the FTP-NEA in the conduct of an arbitral proceeding seeking to overturn the decision which had been reached by her employer not to reappoint her for an additional year of employment. In accordance with the legal services policy of the FTP-NEA, the Appellant's legal case was reviewed and determined to be without a sound legal basis. Thus, further legal services at the expense of FTP-NEA were denied.

The Appellant did not exhaust the internal procedures available to her in seeking to over-

turn the non-funding determination. Rather, she initiated a pro se complaint in the Circuit Court of Leon County, Florida, seeking damages from the FTP-NEA. Each of the claims stated in the complaint, and its several amendments, were based upon state law theories sounding in tort (negligent handling of a grievance), breach of contract (alleging that the "contract of membership" in the FTP-NEA entitled the Appellant to limitless legal services) and alleging that the FTP-NEA was under a duty of fair representation to the Appellant and that such duty was breached.

The trial court accorded the Appellant broad latitude and carefully considered all of the issues presented and finally entered summary judgment in favor of the FTP-NEA (See pp. a-4 through a-5 of appendix to Appellant's jurisdictional statement).

The Appellant prosecuted an appeal to the Florida District Court of Appeal, First District,

from the trial court's decision. That Court considered the briefs of the parties, conducted oral argument, and thereafter entered a per curiam affirmance of the summary judgment entered in favor of FTP-NEA. (See p. a-3 of the appendix to Appellant's jurisdictional statement.) The Appellant's petition for rehearing was denied by the district court of appeal. (See p. a-2 of the appendix to Appellant's jurisdictional statement.)

Thereafter, the Appellant sought to have the district court of appeal decision reviewed by the Supreme Court of Florida by seeking to invoke conflict jurisdiction. The Supreme Court of Florida, relying upon an earlier decision interpreting its constitutional powers of review, summarily dismissed the Appellant's petition and denied rehearing. (See p. a-1 of the appendix to Appellant's jurisdictional statement.)

The Appellant's attempt to invoke the jurisdiction of the Supreme Court of the United States derives solely from the failure of the Supreme Court of Florida, acting in accordance with the provisions of Article V, Section 3(b)(3) of the Florida Constitution, to review the intermediate appellate decision. At no prior time in the prosecution of this case has there been any federal issue raised by the Appellant.

SUMMARY OF ARGUMENT

This appeal should be dismissed for want of a substantial federal question and for the lack of jurisdiction of this Court.

The Appellant's entitlement to judicial review by the courts of the State of Florida, of her non-federal state law claims raised in the proceedings below, derives solely from the state constitutional provisions defining the scope of review available. While it is beyond cavil that

the Appellant is entitled to, and did receive, the full review opportunities granted by the Florida Constitution, there is no independent federal constitutional right to review beyond that accorded by the state constitution.

Succinctly stated, the Appellant's state law claims received complete consideration by the tribunals of the State of Florida judicial system.

The Appellant's attempt to invoke this Court's jurisdiction must fail since the issues posed do not depict a circumstance where the court of last resort in Florida has rendered a decision on a federal question forming an appropriate basis for review. Rather, under the guise of generating a federal question, this Court is being asked to review the proper decision of the Supreme Court of Florida declining to exercise its jurisdiction to review a state law claim.

ARGUMENT

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BY THE APPEAL

The Tenth Amendment to the Constitution of the United States reserves to the States and to the people the power to enact constitutions, laws and other regulations relating to state matters so long as such provisions do not offend specific powers delegated to the United States exclusively. People of State of N.Y. v. O'Neill, 359 U.S. 1 (1959).

In accordance with such authority, the people of the State of Florida, voting in a referendum on March 11, 1980, amended Article V, Section 3(b)(3) of the Florida Constitution relating to the review powers of the Supreme Court of Florida. The change limited the review powers of the Supreme Court of Florida to review the decisions of district courts of appeal which expressly and

directly pose a conflict with prior district court of appeal or supreme court decisions. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).[1/]

It was in reliance upon the Jenkins, supra, decision that the Supreme Court of Florida summarily declined to review the Appellant's state law claims.

Before this Court, the Appellant asserts a federally protected right to review of state law claims by the highest court in the state. While the Appellant plainly has a property interest, protected by the Fourteenth Amendment to the Constitution of the United States, to receive the full benefits of the Florida Constitution, it is

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1/ The change in the constitution probably did not deprive the Appellant of review; it would most likely have been denied even prior to the change in the constitution since the district court of appeal decision was in accordance with, not conflict with, prior decisions on the subject. That is, of course, conjecture at this point since jurisdiction was summarily denied by the court.

the Florida Constitution as constructed by the Florida courts, which delineates the parameters of that right. As this Court noted in Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972):

> "Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law..." Id p. 577

The Appellant's claim to a federally protected right to limitless review of state claims by the state judiciary is without merit. It has long been recognized by this Court that the States have the absolute right to determine the scope of review offered by state tribunals. John v. Paullin, 231 U.S. 583 (1913); Davis v. Packard, 33 U.S. 312 (1834). It is facially apparent from the jurisdictional statement filed herein, that the Supreme Court of Florida dealt

solely with state law issues, in accordance with state constitutional powers, in declining to review the Appellant's claims. Since no federal issues were raised or adjudicated by the courts below, the instant appeal effort fails for want of a substantial federal question.

THE SUPREME COURT OF THE UNITED STATES DOES NOT HAVE ORIGINAL JURISDICTION TO CONSIDER THE APPELLANT'S CLAIM

Since the origin of the Appellant's putative federal constitutional claim derives, by her theory, from the failure of the Supreme Court of Florida to accord review and upon the failure of the Florida Constitution to provide adequate due process, none of the claims presented before this Court have been, or could have been raised in the proceedings below. Nor do the constitutional shortcomings which are alleged to exist and upon which the instant effort is undergirded,

relate in any manner to the actions of the FTP-NEA. Obviously, the FTP-NEA is not the proper party to an attack of the instant type, since the FTP-NEA has no power to alter the Florida Constitution or to affect the review of the Supreme Court of Florida. Thus, the State of Florida, the real party in interest in a claim such as is being raised herein by the Appellant, has had no opportunity to participate in the adjudication of the state law issues presented nor in the adjudication of the putative federal claim.

We can perceive no basis for the Court to recede from its long-standing tradition of dismissing an appeal which seeks to review federal constitutional claims which were not considered in the proceedings below. Lynch v. New York ex rel. Pierson, 293 U.S. 52 (1934); Stembridge v. State of Georgia, 343 U.S. 541 (1952); Durley v. Mayo, 351 U.S. 277 (1956) rehearing den. 352 U.S. 859 (1956).

CONCLUSION

The appeal should be dismissed, or in the alternative, the judgment of the Supreme Court of Florida should be affirmed.

Respectfully submitted,

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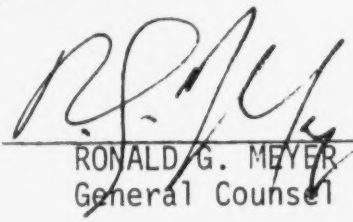
By: 

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